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6 Attorneys for Defendants
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7 PETER BARTON HUTT, JOSEPH M. LIMBER,
KELVIN M. NEU, PATRICK J. SCANNON,
8 JOHN VARIAN, TIMOTHY P. WALBERT,
PAUL D. RUBIN AND JACK L. WYSZOMIERSKI
9 and Nominal Defendant XOMA CORPORATION

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12
13 DEBORAH A. FIESER, derivatively on
behalf of XOMA CORPORATION,

14 Plaintiff,

15 v.

16 W. DENMAN VAN NESS, WILLIAM K.
17 BOWES, JR., PETER BARTON HUTT,
JOSEPH M. LIMBER, KELVIN M. NEU,
18 PATRICK J. SCANNON, JOHN
VARIAN, TIMOTHY P. WALBERT,
19 PAUL D. RUBIN AND JACK L.
WYSZOMIERSKI and Nominal Defendant
20 XOMA CORPORATION,

21 Defendants.
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Case No. 3:15-CV-05236-JST

**STIPULATION AND ~~PROPOSED~~ ORDER
TO RESCHEDULE CASE MANAGEMENT
CONFERENCE**

Judge: Honorable Jon S. Tigar

1 Pursuant to Civil Local Rules 6-2 and 7-12, Plaintiff Deborah A. Fieser (“Fieser”),
2 Jeffrey Csoka (“Cskoka”), and Defendants W. Denman Van Ness, William K. Bowes, Jr., Peter
3 Barton Hutt, Joseph M. Limber, Kelvin M. Neu, Patrick J. Scannon, John Varian, Timothy P.
4 Walbert, Paul D. Rubin, Jack L. Wyszomierski, and Nominal Defendant XOMA Corporation
5 (collectively, “Defendants”), by and through their respective counsel, hereby agree and stipulate
6 that good cause exists to request an order from the Court rescheduling the Case Management
7 Conference currently set for May 17, 2017 in this action and related action at Case No. 3:15-CV-
8 05429-JST to August 23, 2017, and to adjust accordingly the related deadlines set forth therein.

9 WHEREAS, Joseph Markette (“Markette”) filed a securities class action lawsuit against
10 XOMA, John Varian, and Paul Rubin relating to XOMA’s EYEGUARD-B study in the United
11 States Court for the Northern District of California, captioned *Markette v. XOMA Corp., et. al.*,
12 3:15-CV-3425-HSG, on July 24, 2015 (the “Securities Action”);

13 WHEREAS, Plaintiff Fieser filed this related shareholder derivative action, captioned
14 *Fieser v. W. Denman Van Ness, et. cal.*, Case No. 3:15-CV-05236-JST, on November 16, 2015
15 (“Fieser Derivative Action”);

16 WHEREAS, Csoka filed a related shareholder derivative action in the United States
17 Court for the Northern District of California, captioned *Csoka v. John Varian, et. al.*, Case No.
18 3:15-CV-05429-JST, on November 25, 2015 (“Csoka Derivative Action”);

19 WHEREAS, as of April 25, 2016, both the *Fieser Derivative Action* and the *Csoka*
20 *Derivative Action* are before Hon. Jon S. Tigar;

21 WHEREAS, on May 9, 2016, the Court stayed the *Fieser Derivative Action* pending
22 future developments in the Securities Action;

23 WHEREAS, on May 19, 2016, the Court stayed the *Csoka Derivative Action* pending
24 future developments in the Securities Action;

25 WHEREAS, on May 24, 2016, the Court in the Securities Action set a briefing schedule
26 requiring Markette to file an amended complaint by July 8, 2016, Defendants to respond to the
27 amended complaint by August 11, 2016; Markette to file an opposition to the response by
28

1 September 15, 2016, Defendants to file a reply brief by September 29, 2016, and for the hearing
2 to be held on October 13, 2016;

3 WHEREAS, on July 8, 2016, Markette filed an amended complaint adding for the first
4 time Kelvin Neu as a defendant;

5 WHEREAS, on July 22, 2016, the parties in the Securities Action filed a stipulation to
6 amend the case management schedule;

7 WHEREAS, on July 22, 2016, the Court in the Securities Action granted in part and
8 denied in part the parties' stipulation to amend the case management schedule, requiring
9 Defendants to respond to the amended complaint by September 2, 2016; Markette to file an
10 opposition to the response by October 7, 2016; Defendants to file a reply brief by October 21,
11 2016; and for the hearing to be held on November 3, 2016;

12 WHEREAS, the parties filed a stipulation to reschedule the case management conference
13 in this action on August 16, 2016;

14 WHEREAS, on August 19, 2016, this Court ordered the *Fieser* and *Csoka* Derivative
15 Actions related, extended the stay, and denied Defendants' stipulation as moot;

16 WHEREAS, on September 2, 2016, Defendants filed a motion to dismiss the Securities
17 Action;

18 WHEREAS, on September 15, 2016, the Court in the Securities Action continued the
19 hearing to December 15, 2016;

20 WHEREAS, on October 7, 2016, Plaintiff Markette filed an opposition to Defendants'
21 motion to dismiss;

22 WHEREAS, on October 21, 2016, Defendants filed a reply in support of their motion to
23 dismiss;

24 WHEREAS, on December 14, 2016, the Court in the Securities Action vacated the
25 hearing previously scheduled for December 15, 2016, and took the pending motion to dismiss
26 filings under submission;

27 WHEREAS, the Case Management Conference is currently scheduled for May 17, 2017
28 in both the *Fieser* and *Csoka* Derivative Actions;

1 WHEREAS, the Court in the Securities Action has yet to issue an order on the motion to
2 dismiss filings;

3 WHEREAS, in light of the current stay of both the *Fieser* and *Csoka* Derivative Actions
4 and the status of the Securities Action, the parties believe it would be a waste of judicial and
5 party resources for the Court and the Parties to conduct the Case Management Conference on
6 May 17, 2017;

7 WHEREAS Fieser, Csoka, and Defendants further agree that the Case Management
8 Conference should be rescheduled for August 23, 2017, and all related deadlines adjusted
9 accordingly.

10 NOW THEREFORE, THE FOLLOWING IS HEREBY STIPULATED by and between
11 the parties, through their respective counsel:

12 1. The Case Management Conference will be rescheduled to August 23, 2017, and
13 all related deadlines (including ADR deadlines) adjusted accordingly.

14 IT IS SO STIPULATED.

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16 Dated: May 2, 2017

COOLEY LLP

17
18 /s/ Jessica Valenzuela Santamaria
Jessica Valenzuela Santamaria (220934)

19
20 Attorneys for Defendants W. DENMAN VAN NESS,
21 WILLIAM K. BOWES, JR., PETER BARTON HUTT,
22 JOSEPH M. LIMBER, KELVIN M. NEU, PATRICK J.
23 SCANNON, JOHN VARIAN, TIMOTHY P.
24 WALBERT, PAUL D. RUBIN AND JACK L.
25 WYSZOMIERSKI and Nominal Defendant XOMA
26 CORPORATION
27
28

1 Dated: May 2, 2017

GREEN & NOBLIN, P.C.

2 and

3 FEDERMAN & SHERWOOD
4 WILLIAM B. FEDERMAN

5
6 /s/ Robert S. Green

Robert S. Green (136183)

7 Attorneys for Plaintiff DEBORAH A. FIESER

8
9 Dated: May 2, 2017

10 LAW OFFICE OF ADAM R. BERNSTEIN
ADAM BERNSTEIN (132982)

11 /s/ Adam Bernstein

Adam Bernstein (132982)

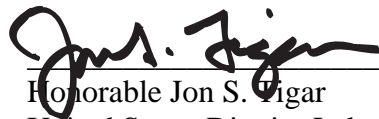
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20 Attorneys for Plaintiff JEFFREY CSOKA

21 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

22
23 DATED: May 3, 2017



Honorable Jon S. Vigor
United States District Judge